FILE COPY

Supreme Court, U. S.
FILED
NOV 26 1945
CHARLES ELMORE CROPLEY

No. 145

In the Supreme Court of the United States

OCTOBER TERM, 1945

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

J. N. FLOWERS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute and regulations involved	2
Statement	2
Specification of errors to be urged	5
Summary of argument	6
Argument:	
The court below erred in reversing the Tax Court's decision that the claimed deductions represented non-deductible living and personal expenses	10
A. The court below attempted to construe "home" as used in Section 23 without regard to its statutory setting	13
B. As used in Section 23 "home" has reference to an abode in the locality of the taxpayer's business headquarters	16
1. The relation of the business traveling expense allowance in Section 23 to Section 24 (a) (1)	16
2. The relation of the business traveling expense clause to the rest of Section 23	19
3. The settled administrative interpretation	28
Conclusion	34
Appendix	35

CITATIONS

Cases:	
Barnhill v. *Commissioner*, 148 F. 2d 913	27, 32, 33
Bingham, Trust u/w of v. *Commissioner*, decided June 4, 1945	20
Bixler v. *Commissioner*, 5 B. T. A. 1181	30
Brewster v. *Gage*, 280 U. S. 327	29
Brown v. *Commissioner*, 13 B. T. A. 832	30
Coburn v. *Commissioner*, 138 F. 2d 763	32
Colgate v. *United States*, 320 U. S. 422	18
Commissioner v. *Heininger*, 320 U. S. 467	20
Deputy v. *du Pont*, 308 U. S. 488	12, 23
Dobson v. *Commissioner*, 320 U. S. 489, rehearing denied, 321 U. S. 231	31

673701—45——1

Cases—Continued Page

Duncan v. *Commissioner*, 17 B. T. A. 1088, affirmed, 47 F. 2d 1082 30
Ellis v. *Burnet*, 50 F. 2d 343 32
Griesemer v. *Commissioner*, 10 B. T. A. 386 30
Gustafson v. *Commissioner*, 3 T. C. 998 30
Helvering v. *Canfield*, 291 U. S. 163 25
Helvering v. *Morgan's, Inc.*, 293 U. S. 121 16, 19
Helvering v. *Stockholms &c. Bank*, 293 U. S. 84 16
Helvering v. *Winmill*, 305 U. S. 79 29
Interstate Transit Lines v. *Commissioner*, 319 U. S. 590 12
Kornhauser v. *United States*, 276 U. S. 145 20
Lindsay v. *Commissioner*, 34 B. T. A. 840 26, 30
McDonald v. *Commissioner*, 323 U. S. 57 12, 20
New Colonial Co. v. *Helvering*, 292 U. S. 435 12
Peters v. *Commissioner*, 19 B. T. A. 901 30
Powell v. *Commissioner*, 34 B. T. A. 655 30
Priddy v. *Commissioner*, 43 B. T. A. 18 30
Schurer v. *Commissioner*, 3 T. C. 544 30
Taft v. *Commissioner*, 304 U. S. 351 29
Tracy v. *Commissioner*, 39 B. T. A. 578 30
United States v. *American Trucking Ass'ns*, 310 U. S. 534 16, 31
Wallace v. *Commissioner*, 144 F. 2d 407 32
Welch v. *Helvering*, 290 U. S. 111 22
Winborne v. *Commissioner*, 148 F. 2d 913 27, 32, 33

Statutes:

Internal Revenue Code:
Sec. 23 (26 U. S. C., Sec. 23) 6, 7, 8, 11, 12, 15, 17, 19
Sec. 24 (26 U. S. C., Sec. 24) 6, 11, 12, 17, 19
Legislative Branch Appropriations Act, 1946, Public Law 85, 79th Cong., 1st Sess. 26
Revenue Act of 1921, c. 136, 42 Stat. 227:
Sec. 213 11
Sec. 214 11
Revenue Act of 1924, c. Stat. 253, Sec. 214 29
Revenue Act of 1926, c. 2 Sta. 9, Sec. 214 29
Revenue Act of 1928, c. 852, 45 Stat. 791, Sec. 23 29
Revenue Act of 1932, c. 209, 47 Stat. 169, Sec. 23 29
Revenue Act of 1934, c. 277, 48 Stat. 680, Sec. 23 29
Revenue Act of 1936, c. 690, 49 Stat. 1648, Sec. 23 29
Revenue Act of 1938, c. 289, 52 Stat. 447, Sec. 23 29

Miscellaneous:

61 Cong. Record, Part 5, p. 5201 11
91 Cong. Record:
Pp. 4503–4532, May 10, 1945 26
Pp. 5109–5124, May 24, 1945 26
Pp. 5825–5831, June 7, 1945 26
G. C. M. 4956, VII–2 Cum. Bull. 128 (1928) 29

Miscellaneous—Continued

	Page
G. C. M. 23672, 1943 Cum. Bull. 66	29
Hearings before the Senate Subcommittee of the Committee on Appropriations, May 17, 1945, pp. 2–19, 30–33	26
H. R. 1627, 79th Cong., 1st Sess	26
H. Rep. No. 350, 67th Cong., 1st Sess., p. 11 (1939–1 Cum. Bull. (Part 2) 168, 177)	11
I. T. 1264, I–1 Cum. Bull. 122 (1922)	29
I. T. 1355, I–1 Cum. Bull. 194 (1922)	29
I. T. 1380, I–2 Cum. Bull. 88 (1922)	29
I. T. 1404, I–2 Cum. Bull. 145 (1922)	29
I. T. 3314, 1939–2 Cum. Bull. 152	29
Mim. 2688, 4 Cum. Bull. 209 (1921)	29
O. D. 905, 4 Cum. Bull. 212 (1921)	29
O. D. 1021, 5 Cum. Bull. 174 (1921)	29
S. Rep. No. 275, 67th Cong., 1st Sess., p. 14 (1939–1 Cum. Bull. (Part 2) 181, 191)	11
Special Ruling of the Commissioner, July 20, 1945 (1945 C. C. H., Vol. 4, par. 6294)	26
Treasury Regulations 45, promulgated under the Revenue Act of 1918, Art. 292	12
Treasury Regulations 62, promulgated under the Revenue Act of 1921, Art. 101	28
Treasury Regulations 65, promulgated under the Revenue Act of 1924, Art. 102	28
Treasury Regulations 69, promulgated under the Revenue Act of 1926, Art. 102	28
Treasury Regulations 74, promulgated under the Revenue Act of 1928, Art. 122	28
Treasury Regulations 77, promulgated under the Revenue Act of 1932, Art. 122	28
Treasury Regulations 86, promulgated under the Revenue Act of 1934, Art. 23 (a)–2	28
Treasury Regulations 94, promulgated under the Revenue Act of 1936, Art. 23 (a)–2	28
Treasury Regulations 101, promulgated under the Revenue Act of 1938, Art. 23 (a)–2	28
Treasury Regulations 103, promulgated under the Internal Revenue Code:	
Sec. 19.23 (a)–1	20
Sec. 19.23 (a)–2	28
Webster's New International Dictionary (1939 ed.)	16

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 145

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

J. N. FLOWERS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 14–21) is not reported. The opinion of the Circuit Court of Appeals (R. 57–60) is reported at 148 F. 2d 163.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 23, 1945. (R. 60.) The petition for a writ of certiorari was filed on June 21, 1945, and was granted on October 8, 1945. (R. 61). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether taxpayer's living expenses in 1939 and 1940 while residing at the city where he had been regularly and principally employed since 1927, and for trips between that city and another city where he chose for personal reasons to maintain a residence and perform some of his work, were non-deductible living and personal expenses within the purview of Section 24 (a) (1) of the Internal Revenue Code, as the Tax Court held, or ordinary and necessary business traveling expenses deductible under Section 23 (a) (1) (A), as the court below held.

STATUTE AND REGULATIONS INVOLVED

The applicable statute and regulations are set forth in the Appendix, *infra*.

STATEMENT

The facts as found by the Tax Court (R. 14–19) may be summarized as follows:

Taxpayer, a lawyer, commenced the practice of law in Mississippi in 1896. In 1903 he moved to Jackson, Mississippi, where he served as assistant attorney general of the State until 1906, when he resigned to enter a law firm in Jackson. Later he formed a new law firm at Jackson which since 1922 has been known as Flowers, Brown & Hester. (R. 14.) In 1917–1918 he built a house in Jackson, which he has since maintained for himself and his family. (R. 15.)

In 1906 taxpayer began representing the predecessor of the Gulf, Mobile & Ohio Railroad, his present employer. From then until about 1918 he tried cases for the company, mostly in Mississippi where the bulk of its properties were located; and from 1918 until 1927 he acted as special counsel for the company in Mississippi. In 1927 he was elected general solicitor and continued to be elected to that position each year until 1930, when he was elected general counsel. Thereafter he was annually elected general counsel until September, 1940, when the properties of the predecessor company and another railroad company were merged and he was elected vice president and general counsel of the newly formed Gulf, Mobile & Ohio Railroad. (R. 14–15.)

The principal office of the Gulf, Mobile & Ohio Railroad is in Mobile, Alabama, as was also the principal office of its predecessor. When offered the position of general solicitor in 1927, taxpayer was unwilling to accept if it required him to give up his residence in Jackson. Accordingly, an arrangement was made between him and the railroad company whereby he was permitted to determine for himself the amount of time he would spend in Jackson and Mobile, respectively, on condition that he pay his own traveling expenses between the two places and his living expenses in both places. This arrangement continued through the taxable years. (R. 15–16.)

The railroad company provided an office for taxpayer in Mobile but not in Jackson; when taxpayer worked in Jackson his law firm provided him with office space, in which he had some of his own furnishings. The company also provided telephone service and a desk and typewriter for his secretary in his Jackson office and paid the secretary's expenses while in Jackson. (R. 16.) While most of the litigation of the company was conducted in Mississippi, this business was handled by local counsel, taxpayer's participation being advisory only and not different from his participation in similar business handled by local attorneys in other areas. (R. 16–17.) Taxpayer's employment did not prohibit him from accepting outside law work, but after the first few years he performed outside work only occasionally and during the taxable years performed none at all. He has not participated in the conduct of the business of the Jackson law firm whose title still includes his name, nor has he shared in its income. (R. 16.)

Since his employment by the railroad company in 1927, first as general solicitor and thereafter as general counsel and vice president, taxpayer has performed his duties principally at the main office of the company in Mobile. However, during 1939 and 1940, the taxable years, he chose to spend most of his time in Jackson, working on matters relating to the merger. (R. 18.) During 1939 he spent 203 days in Jackson and 66 in Mobile

and made 33 trips between the two cities. During 1940 he spent 168 days in Jackson and 102 in Mobile, making 40 trips between the two cities. (R. 17–18.) The railroad company paid all of taxpayer's traveling expenses when he went on business trips to points other than Jackson or Mobile, but it paid none of his expenses in traveling between these two points or while he was at either of them. His salary as general counsel in 1939 was $17,000, and as vice president and general counsel in 1940 it was $25,536.40. (R. 18.)

In his income tax returns for 1939 and 1940 taxpayer deducted his expenditures for meals and hotel accommodations while in Mobile and the expense of traveling between Mobile and Jackson, in the amount of $900 for 1939 and $1,620 for 1940. (R. 19, 38, 42–43.) The Commissioner disallowed the deductions. (R. 19.) The Tax Court sustained the Commissioner's determination (R. 22), and the Circuit Court of Appeals reversed (R. 60).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that taxpayer's living expenses at his regular and principal place of employment are deductible under Section 23 (a) (1) (A) of the Internal Revenue Code as ordinary and necessary business traveling expenses.

(2) In holding that taxpayer's expenses in traveling between the place where he was regu-

larly and principally employed and a place where he chose to keep a residence and perform some of his work are deductible under Section 23 (a) (1) (A) as ordinary and necessary business traveling expenses.

(3) In construing "home", for purposes of Section 23 (a) (1) (A), as denoting an abode where the taxpayer in fact lives or intends to live permanently, rather than his abode at the place where he is regularly or principally engaged in business.

(4) In reversing the judgment of the Tax Court.

SUMMARY OF ARGUMENT

The business traveling expense allowance in Section 23 must be examined not only in the light of the rule that deductions are matters of legislative grace, but in conjunction with the legislative mandate in Section 24 that no deduction shall "in any case" be allowed for living or personal expenses. Taxpayer's 1939 and 1940 living expenses in Mobile—his business headquarters since 1927—and the cost of trips between that city and Jackson, where he chose to keep his living headquarters and perform some of his work, were non-deductible living and personal expenses, as the Tax Court held, not deductible business traveling expenses, as the court below held. In reversing the Tax Court, the court below proceeded on the theory that "home" as used in Section 23 is to be

accorded its usual meaning. But "home", standing by itself, has many meanings; indeed, the court below ascribed to the word two different meanings by defining it as the place where one "in fact" lives and the place where one has the "intention" of living. Even if "home" were susceptible of but one literal interpretation, the court below erred in assuming that it was bound by that meaning. Its duty was to construe the statute by considering the word in its context, not as an isolated term, and by employing other appropriate guides for ascertaining the legislative intent.

Viewed in its statutory setting, the allowance in Section 23 for business traveling expenses has a patent objective. It is designed to afford relief to a taxpayer who in pursuit of his trade is required temporarily to travel away from the locality where he is regularly practicing it. To construe "while away from home" for purposes of Section 23 as having reference to absence from an abode other than one in the locality where the taxpayer carries on his business frustrates the legislative intent, unequivocally expressed in Section 24, to prohibit any deduction for personal or living expenses. The decision below produces the incongruous result that subsistence and commuting expenses remain non-deductible living and personal expenses if the taxpayer maintains a single dwelling place in the vicinity of his place of business, but are transformed into deductible

business traveling expenses if he chooses to maintain additional living quarters, which he regards as "home", at a distant point. It imputes to Congress an intention to discriminate in favor of those taxpayers who are able to own or rent several dwelling places simultaneously, one where their work requires them to be and one or more elsewhere. Nothing in the statute or its legislative history warrants the assumption that Congress intended to place a premium on the maintenance of a taxpayer's living headquarters at a distance from his business headquarters. Even if the legislative intent were not as plain as it is, a desire for equality among taxpayers, rather than the reverse, is to be attributed to Congress.

The allowance for business traveling expenses must also be correlated with the rest of Section 23. Such expenses represent but one class of business expenses authorized as a deduction by Section 23 and, accordingly, must qualify as "ordinary and necessary expenses * * * in carrying on" the business. The maintenance of more than one dwelling place manifestly was not essential to the conduct of the taxpayer's business. Living expenses incurred in the locality of one's business headquarters and the cost of traveling to and from the office no more constitute ordinary and necessary business expenses in the case of a taxpayer who chooses to keep several dwelling places than in the case of one who has a single dwelling place. Nor may the expenses

in question be characterized as "traveling" expenses embraced by Section 23, for they were not incurred by taxpayer in the course of business trips to Mobile but by virtue of the fact that for 13 years he had been regularly and principally employed in Mobile. A construction of the business traveling expense clause which compels treatment of 13 years' continuous employment in one locality as involving business trips to that locality is unrealistic and perverts the underlying purpose of the relief provision.

Moreover, the decision below repudiates the settled administrative interpretation, which has received implied legislative approval by successive reenactment of the business traveling expense clause in the same form in which it first appeared in the Revenue Act of 1921. The long-standing applicable Treasury Regulations are consonant only with the view that "while away from home" as used in Section 23 has reference to a temporary business trip away from the taxpayer's business headquarters, not to absence from living headquarters maintained elsewhere. The established rule, embodied in the Regulations, that commuters' fares are not deductible, necessarily rests on the premise that "home" for tax purposes is in the locality of the taxpayer's business headquarters, and that traveling between home and work is not travel incurred in the pursuit of a trade or business. The administrative rulings since 1921 have likewise construed "home" as having reference to

an abode at the taxpayer's regular post of duty. What is more, the Tax Court has consistently followed the administrative interpretation. Where, as here, we are dealing with a long-standing statutory provision which has acquired a meaning shaped by administrative practice and legislative reenactment, and the Tax Court's construction is in accord, there can be little latitude on judicial review for reaching a contrary interpretation. In any event, it cannot be said that the Tax Court's construction was so irrational as to constitute reversible error.

Under the rationale of the decision below any full-time employee, governmental or private, would be permitted to deduct his living expenses at his regular post of duty simply because for reasons satisfactory to himself he maintained at a distant point a residence which he regarded as "home." The advantages to taxpayers so situated and the discrimination against those whose only dwelling place is at their post of duty are apparent. It is inconceivable that Congress intended such results.

ARGUMENT

THE COURT BELOW ERRED IN REVERSING THE TAX COURT'S DECISION THAT THE CLAIMED DEDUCTIONS REPRESENTED NON-DEDUCTIBLE LIVING AND PERSONAL EXPENSES

The taxing statute draws a distinction between personal and living expenses on the one hand,

and business expenses on the other. Under Section 24 (a) (1) of the Internal Revenue Code (Appendix, *infra*) the former are not deductible "in any case"; under Section 23 (a) (1) (A) (Appendix, *infra*) the latter are deductible if they are "ordinary and necessary." Expressly included among ordinary and necessary business expenses allowed by Section 23 are "traveling" expenses inclusive of "meals and lodging."[1] Thus, Section 23 (a) (1) (A) authorizes the deduction from gross income of—

> All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, in-

[1] The business traveling expense clause first appeared in Section 214 (a) (1) of the Revenue Act of 1921, c. 136, 42 Stat. 227, and has reappeared in substantially the same form in all subsequent Revenue Acts. The Senate Committee Report on the Revenue Bill of 1921 states merely that "Section 214 allows substantially the same deductions in computing net income as are authorized under existing law, but adds the following provisions: (1) The deduction for business expenses is extended to include all traveling expenses incurred while away from home in the pursuit of a trade or business." S. Rep. No. 275, 67th Cong., 1st Sess., p. 14 (1939–2 Cum. Bull. (Part 2) 181, 191). See also H. Rep. No. 350, 67th Cong., 1st Sess., p. 11 (1939–1 Cum. Bull. (Part 2) 168, 177) to the same effect.

Apparently the clause was added to dispel any doubt as to the right of taxpayers engaged in business for themselves to deduct business traveling expenses. See 61 Cong. Record, Part 5, p. 5201:

"Mr. Hawley. * * * In Section 213 [Section 214 (a) (1) of the 1921 Act] provision is made for the deduction of traveling expenses of persons traveling on business. This will affect the commercial travelers of the country, and espe-

> cluding * * * traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business * * *.

The above provision must of course be examined in the light of the "now familiar rule that an income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer". *Interstate Transit Lines* v. *Commissioner*, 319 U. S. 590, 593. See also *New Colonial Co.* v. *Helvering*, 292 U. S. 435; *Deputy* v. *du Pont*, 308 U. S. 488; *McDonald* v. *Commissioner*, 323 U. S. 57. This rule acquires added significance in terms of the issue here presented, for the clause within Section 23 (a) (1) (A) authorizing the deduction of business traveling expenses inclusive of "meals and lodging" must also be read in conjunction and harmonized with the legislative mandate in Section 24 (a) that—

> In computing net income no deduction shall in any case be allowed in respect of—

---

cially those who are traveling on a commission basis. Heretofore they have not been allowed this deduction, while those traveling on a salary have. This is a measure of justice and will also encourage the men who wish to enter business for themselves."

Article 292 of Treasury Regulations 45, under the Revenue Act of 1918, provided that necessary traveling expenses inclusive of meals and lodging "in an amount in excess of any expenditures ordinarily required for such purposes when at home, become business instead of personal expenses."

(1) Personal, living, or family expenses; * * *

A. THE COURT BELOW ATTEMPTED TO CONSTRUE "HOME" AS USED IN SECTION 23 WITHOUT REGARD TO ITS STATUTORY SETTING

This case turns solely on the proper construction of the business traveling expense clause in Section 23. The deductions in controversy consist of taxpayer's expenditures during the taxable years 1939 and 1940 for meals and hotel accommodations while living in Mobile, where since 1927 he had been regularly and principally employed as general counsel for a railroad company, and for trips between that city and Jackson, where for personal reasons he chose to maintain additional living quarters and to perform some of his work. (R. 15–19, 38.) The Tax Court concluded that "The situation presented in this proceeding is, in principle, no different from that in which a taxpayer's place of employment is in one city and for reasons satisfactory to himself he resides in another"; accordingly, it disallowed the deductions on the ground that they represented living and personal expenses within the purview of Section 24, not business traveling expenses embraced by Section 23. (R. 21.) In reversing the Tax Court, the court below accepted the facts as found by that tribunal, but refused to follow its construction of the applicable statutory provisions. (R. 58–59.) It held (R. 59) that "Conceding as a matter of fact that the taxpayer's principal of-

fice was in Alabama, and that his principal duties were performed there," as a matter of law his "home" for purposes of Section 23 was in Mississippi and the claimed deductions were business "traveling expenses * * * while away from home". The court below professed to reach this conclusion on the premise (R. 59) that "There is no indication in the statute of a legislative intention to give the word [home] an unusual or extraordinary meaning". It proceeded, however, not only to define the word "as used in the statute" but to ascribe to it two different statutory meanings (R. 59): (1) "that place where one in fact resides"; and (2) "the principal place of abode of one who has the intention to live there permanently". Since the place where one "in fact" lives does not necessarily coincide with the place where one has the "intention" of living, these two definitions by no means afford compatible criteria for determining the deductibility of business traveling expenses "while away from home". What is more, neither of these definitions of "home" represents, we submit, a tenable construction of that term as used in Section 23.

To construe "while away from home" for purposes of Section 23 as having reference to absence from "that place where one in fact resides", as did the court below in its first suggested definition of "home", is to circumvent the very point at issue. For taxpayer "in fact" lived at Mobile, his business headquarters, during the period that

the living expenses in question were incurred, just as he "in fact" lived at Jackson and elsewhere during the intervals he was away from Mobile. Indeed, any taxpayer claiming deduction for meals and lodging necessarily will "in fact" have resided where such living expenses were incurred, at least during the period they were incurred. Instead of supporting the decision below, this first suggested meaning of "home" would preclude any deduction under Section 23 for meals and lodging; by definition such expenses will always have been incurred at "home," rather than, as the statute requires, "while away from home." The critical question, to which the court below failed to address itself in defining the statutory home as the place where one "in fact resides", is whether taxpayer's home for tax purposes was the dwelling place where he resided during the periods the living expenses in question were incurred (Mobile), or some dwelling place where he resided during other periods (Jackson and elsewhere). That the court below here straddled the issue is evident from its observation (R. 59) that it was "unnecessary to indulge in * * * speculations" whether taxpayer was away from his statutory home while living in Jackson or while living in Mobile.[2]

The second definition of "home" offered by the court below, while it purports to resolve the issue,

[2] Section 23 manifestly contemplates the existence of only one "home" at any one time for tax purposes. If a statutory home could exist simultaneously at two or more places the taxpayer would always be "away" from one or another.

attempts to do so by reference solely to the word itself, torn from the statutory fabric. Obviously the word "home", standing by itself, has many meanings,[3] as the court below recognized by attributing two different so-called ordinary meanings to it. But even if "home" had only one ordinary meaning the court below would have misconceived established principles of statutory construction in assuming that it was bound by that meaning. *United States* v. *American Trucking Ass'ns*, 310 U. S. 534, 543–544; *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 94; *Helvering* v. *Morgan's, Inc.*, 293 U. S. 121, 126. Its duty was to ascertain the legislative intent (*Helvering* v. *Stockholms &c. Bank, supra*, pp. 93–94)—

> not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use, and other appropriate tests for the ascertainment of the legislative will.

B. AS USED IN SECTION 23 "HOME" HAS REFERENCE TO AN ABODE IN THE LOCALITY OF THE TAXPAYER'S BUSINESS HEADQUARTERS

1. *The relation of the business traveling expense allowance in Section 23 to Section 24 (a)*

[3] Webster's New International Dictionary (1939 ed.) lists 10 meanings of the word.

(1).—Viewed in its statutory setting, and particularly in juxtaposition to the omnibus disallowance in Section 24 (a) (1) of deductions for personal and living expenses, the allowance in Section 23 for business traveling expenses inclusive of "meals and lodging" has a patent objective. It is designed to extend relief to a taxpayer who in pursuit of his business must travel temporarily or intermittently away from the locality where he is regularly carrying on his business. Were a taxpayer's expenses for meals and lodging at the locality of his business headquarters and in commuting to and from his office deemed to be within its embrace, the legislative mandate in Section 24 would be frustrated; for obviously all taxpayers engaged in business must incur such living and personal expenses, wherever they may keep their living headquarters. The decision below produces the incongruous result that subsistence and commuting expenses remain non-deductible living and personal expenses under Section 24 if the taxpayer has his living headquarters in the locality of his business headquarters, but are transformed into deductible business traveling expenses under Section 23 if he chooses to maintain, in addition to living quarters in the neighborhood of his business, separate living quarters elsewhere which he regards as "home". It imputes to Congress an intention to discriminate against those taxpayers who have a single dwelling place in the

vicinity of their working headquarters, and in favor of those who are able to own or rent several dwelling places simultaneously, one in proximity to the place where they work and one or more elsewhere.

There is no warrant in the language of the statute or the legislative history of the business traveling expense provision—nor is any reason suggested in the opinion below—for the view that Congress intended to place a premium on the maintenance of a taxpayer's living headquarters at a distance from his business headquarters by sanctioning the deduction under these circumstances of purely living and personal expenses as business traveling expenses. It is inconceivable that Congress, having in Section 24 peremptorily denied all taxpayers the privilege "in any case" of deducting personal or living expenses, wished to place beyond the reach of this flat prohibition those taxpayers who choose to keep their living headquarters at a distance from the localities where they produce their taxable incomes. Even if the legislative intent in this respect were not as plain as it is, "A desire for equality among taxpayers is to be attributed to Congress, rather than the reverse", *Colgate* v. *United States*, 320 U. S. 422, 425. When the traveling expense provision is examined in conjunction with Section 24, the conclusion is irresistible that "while away from home" as used in

Section 23 has reference to a temporary business trip away from an abode at the locality where the taxpayer is earning his livelihood, not to absence from an abode elsewhere.

2. *The relation of the business traveling expense clause to the rest of Section 23.*—The court below erred not only in failing to correlate the allowance of business traveling expenses in Section 23 with the disallowance of personal and living expenses in Section 24, but in isolating the business traveling expense clause from the rest of Section 23 itself. For "traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business" represent but one kind of "ordinary and necessary expenses * * * in carrying on any trade or business" authorized as a deduction by Section 23. The word "including", which follows the general clause and precedes the clause relating to traveling expenses, imports that the draftsman intended by the traveling expense allowance to specify a particular class of expenses embraced by the general category of ordinary and necessary business expenses. Cf. *Helvering* v. *Morgan's, Inc., supra.* That this was the legislative intent is confirmed by the committee reports accompanying the Revenue Act of 1921.[4] The court below was unconcerned, however, with whether the claimed

[4] See footnote 1.

deductions qualified as "ordinary and necessary expenses * * * in carrying on" taxpayer's employment duties. Its reversal of the Tax Court's decision was predicated entirely on its view of the word "home" found in the business traveling expense clause. Had it examined the word and the clause in which it appears in the context of Section 23 as a whole (and even apart from Section 24 (a) (1)) it could not, we believe, have reached the conclusion it did.

In the first place, the claimed deductions do not even constitute "business" expenses, since they were not directly connected with the carrying on of taxpayer's employment duties. Section 29.23 (a)–1 of Treasury Regulations 103 (Appendix, *infra*). See also *Kornhauser* v. *United States*, 276 U. S. 145; *Commissioner* v. *Heininger*, 320 U. S. 467; *McDonald* v. *Commissioner*, 323 U. S. 57; *Trust u/w of Bingham* v. *Commissioner*, No. 932, October Term 1944, decided by this Court June 4, 1945, not yet reported. The maintenance of more than one dwelling place manifestly is not essential to the prosecution of a business. To treat living expenses incurred in the vicinity of taxpayer's regular place of employment and the cost of commuting to and from his office as "business" expenses, merely because he keeps additional living quarters elsewhere which he considers to be his home, would (*McDonald* v. *Commissioner*, *supra*, pp. 60–61)—

> disregard the explicit restrictions of Section 23 confining deductible expenses solely to outlays in the efforts or services * * * from which the income flows.

Such expenditures retain their character as non-deductible living and personal expenses irrespective of the number of abodes a taxpayer may choose to own or rent or which one he calls "home"; they no more represent "business" outlays in the case of a taxpayer who maintains several dwelling places than in the case of one who has a single dwelling place.

Nor does the circumstance that taxpayer desired to retain his contacts at Jackson in order to provide against the possibility that he might at some future time desire to resume his law practice there, serve to give his maintenance of a residence at Jackson a "substantial business purpose", as held by the court below. (R. 58.) None of the taxpayer's income was derived from his firm at Jackson; his sole employment during the taxable years was as an official of the railroad. (R. 16.) Since his business relationship during the taxable years was solely with the railroad, any plans for his future employment elsewhere must fall into a personal category. The statute allows business deductions in recognition of the expense involved in earning the income which is to be taxed, and that allowance must necessarily exclude expenditures of a non-existent

but merely potential business, which have no relationship to the taxable income. Taxpayer's maintenance of a residence at Jackson was no more actuated by a business purpose than was the securing of his legal education. While both might have a prospective business use, the expenses incurred had no relation to any current business activity. In any event, even if the maintenance of the Jackson residence could qualify as a business expense, no such deduction is claimed here. This case involves only the expenses incurred in traveling between Jackson and Mobile, and the expenses incurred while residing at the latter place.

Secondly, even if the claimed deductions could be regarded as "business" expenses, they could hardly be characterized as "ordinary and necessary" within the accepted meaning of those statutory terms. Increased expenditures for food, residential rent, and commutation resulting from a taxpayer's maintenance of his living headquarters at a distance from his business headquarters cannot be considered "necessary for the development of the * * * business, at least in the sense that they were appropriate and helpful" (*Welch* v. *Helvering*, 290 U. S. 111, 113); for they are no more "necessary" than are the food, rent, and commutation expenses of a taxpayer whose only living quarters are in the environs of his place of employment. Nor is there anything in the record which even remotely suggests that taxpayer's Mobile living ex-

penses were "ordinary" business expenses in the requisite sense that they were "of common or frequent occurrence in the type of business involved" (*Deputy* v. *du Pont*, 308 U. S. 488, 495).[5]

Moreover, and quite apart from the foregoing considerations, taxpayer's Mobile living expenses and the cost of trips between his Mobile and Jackson living quarters cannot, in any real sense, be regarded as business "traveling" expenses within the purview of Section 23. For they were not incurred in the course of business trips to Mobile but by virtue of the fact that for 13 consecutive years commencing in 1927 taxpayer had been em-

[5] True, taxpayer had an understanding with his employer which permitted him to decide for himself how much business time he would spend at his business headquarters in Mobile (R. 15–16), and during the taxable years chose to spend more days at Jackson than at Mobile (R. 17–18). But this arrangement was made to meet taxpayer's personal wishes and convenience, not for business reasons; indeed, taxpayer's employer acquiesced in the arrangement upon condition that taxpayer pay his own traveling expenses between Mobile and Jackson and his living expenses at both places (R. 15–16, 18), and at times complained about his failure to spend more time at his Mobile office (R. 16). And although taxpayer chose to spend more days at Jackson during the taxable years, since 1927 he had performed his duties principally at Mobile (R. 18). At any rate, it is plain from its opinion that the court below was not influenced by such factors; even if taxpayer had chosen in every year to spend all of his business time in Mobile and none in Jackson, under its conception of the statute his "home" for purposes of Section 23 would nonetheless have to be treated as his residence in Jackson, and his living expenses while working in Mobile as deductible business traveling expenses "while away from home."

ployed there as general counsel for a railroad company having its main office in that city (R. 15), where he had been performing his duties (R. 18, 21, 59). Taxpayer's presence in Mobile was required, and the living and traveling expenses in question were incurred, not because he had to travel temporarily to that city in the pursuit of a business being carried on elsewhere, but because Mobile was his regular post of duty. As the Tax Court pointed out (R. 21), taxpayer made "no claim that in accepting the positions which he held with the railroad from and after 1927 he did not in fact look upon it as being continuous in character". Insofar as his employment required him to travel from Mobile, his expenses, including "meals and lodging" at other points, might constitute deductible business "traveling" expenses.[6] But his living expenses in Mobile and the cost of trips between his Mobile and Jackson dwelling places clearly are not within that category. Taxpayer's employers did not require him to travel between Jackson and Mobile on business for them. (R. 20.) To hold, as did the court below, that 13 years' continuous employ-

[6] Taxpayer took trips during the taxable years to Washington, New York, New Orleans, Baton Rouge, Memphis and Jackson (Tenn.) (R. 18), which might fall in the category of business trips. His trips to Jackson (Miss.), with the exception of those made in order to participate in litigaton there (R. 18), were undertaken only because taxpayer chose for his own convenience to keep a residence and perform some of his duties there (R. 15–16, 18, 20).

ment at one locality must as a matter of law be treated as requiring business trips to that locality, simply because the taxpayer considers his home to be elsewhere, disregards reality and perverts the underlying purpose of the allowance for business "traveling" expenses. If the view of the court below is correct, a taxpayer may spend the major portion (or even all) of his business life at a distance from a dwelling place which he regards as his "home", and yet be entitled to deduct his living expenses at the established place of business plus the cost of traveling periodically between the two locations. An interpretation of "home" for tax purposes which compels such a result surely is not in keeping with the fundamental principle that taxation rests upon a practical and realistic base. Nor is it in keeping with the equally fundamental doctrine that deduction provisions are to be strictly construed and confined to matters unmistakably within their terms. Even if we were not here dealing with a deduction provision, "Such an intention to disregard realities so as to afford immunity from a tax is not lightly to be ascribed to the taxing authority." *Helvering* v. *Canfield*, 291 U. S. 163, 168.

Under the rationale of the holding below any permanent full-time federal employee in Washington who maintains a residence elsewhere which he regards as "home" might claim deduction of all his Washington living expenses as business

traveling expenses. By the same token, any permanent full-time state or private employee who maintains a residence at a distance from his post of duty might claim deduction of all his living expenses at his post of duty as business traveling expenses. Conversely, any such employee whose duties require him to travel temporarily to the locality where he maintains his former residence would be precluded from deducting the expenses of the trip, since he would be traveling to, rather than "away from home." Such results manifestly were not within the intent of Congress.[7]

The correct interpretation of the business traveling expense allowance is, we submit, that

---

[7] It has been held (*Lindsay* v. *Commissioner*, 34 B. T. A. 840) and Congress has acted on the assumption that the Washington living expenses of its own members are not deductible under Section 23, notwithstanding that they maintain their "homes" elsewhere. One of the purposes of the provision in the Legislative Branch Appropriations Act, 1946, Public Law 85, 79th Cong., 1st Sess., for a $2,500 annual expense allowance to members of the House of Representatives was to assist the members in defraying nondeductible Washington living expenses. See Hearings before the Senate Subcommittee of the Committee on Appropriations, on H. R. 3109, 79th Congress, May 17, 1945, pp. 2–19, 30–33; 91 Cong. Rec. 4503–4532, May 10, 1945; 5109–5124, May 24, 1945; 5825–5831, June 7, 1945; Special Ruling of the Commissioner, July 20, 1945 (1945 C. C. H., Vol. 4, par. 6294). Cf. H. R. 1627, 79th Cong., 1st Sess., providing that for purposes of Section 23 the "home" of a member of Congress shall be the place of his residence in the State from which he is a member; this bill would be superfluous if the construction of "home" adopted by the court below were correct.

expounded in *Barnhill* v. *Commissioner* and *Winborne* v. *Commissioner,* 148 F. 2d 913, where the Circuit Court of Appeals for the Fourth Circuit expressly declined to follow the holding of the court below. In those cases two associate justices of the Supreme Court of North Carolina who maintained their residences and their social, religious, and political affiliations in the sections of the State from which they came and in which they had previously practiced law, sought to deduct their living expenses at Raleigh, where the court sat, and the cost of trips between Raleigh and their respective residences as business traveling expenses. In affirming the Tax Court's disallowance of the claimed deductions, the court stated *inter alia* (p. 917):

> It is clear in the first place that Congress, in prescribing the rules for the computation of net income, intended to confine the deductions for business expenses to those which are ordinary and necessary, and to prohibit the deduction of personal living or family expenses. It was recognized that the taxpayer must maintain a home for his family at his own expense even when he is absent on business, and that his personal expenses during his absence on business may fairly be regarded as expenses of the business. But it is not reasonable to suppose that Congress intended to allow as a business expense those outlays which are not caused by the exigen-

cies of the business but by the action of the taxpayer in having his home, for his own convenience, at a distance from his business. Such expenditures are not essential to the prosecution of the business and were not within the contemplation of Congress which proceeded on the assumption that a business man would live within reasonable proximity to his business. This is not the same as saying that the word "home" means "place of business" although in most cases where deductions for traveling expenses are claimed, the result will be the same.

3. *The settled administrative interpretation.*—If more were needed to demonstrate the error in the decision below, it is to be found in the court's repudiation of the long-settled administrative practice, which dates from the initial appearance of the business traveling expense clause in the Revenue Act of 1921. Section 19.23 (a)-2 of Treasury Regulations 103 (Appendix, *infra*), which is substantially the same as those under prior acts,[8] is consonant only with the view that "while away from home" as used in Section 23 has reference to a temporary business trip away from the taxpayer's regular post of duty. The well recognized rule, embodied in this regulation, that commuters' fares are not deductible as business

[8] Article 23 (a)-2 of Regulations 101, 94, 86; Article 122 of Regulations 77 and 74; Article 102 of Regulations 69 and 65; Article 101 (a) of Regulations 62.

traveling expenses, necessarily rests on the premise that "home" for tax purposes is at the locality of the taxpayer's business headquarters. The court below summarily disposed of the crucial question whether taxpayer was a commuter on the irrelevant ground (R. 59) that he used "the cheapest and most convenient means of transportation".

The administrative rulings, also dating from 1921, have likewise treated the statutory home as the abode at the taxpayer's regular post of duty. See, e. g., O. D. 905, 4 Cum. Bull. 212 (1921); O. D. 1021, 5 Cum. Bull. 174 (1921); Mim. 2688, 4 Cum. Bull. 209 (1921); I. T. 1264, I–1 Cum. Bull. 122 (1922); I. T. 1355, I–1 Cum. Bull. 194 (1922); I. T. 1380, I–2 Cum. Bull. 88 (1922); I. T. 1404, I–2 Cum. Bull. 145 (1922); G. C. M. 4956, VII–2 Cum. Bull. 128 (1928); I. T. 3314, 1939–2 Cum. Bull. 152; G. C. M. 23672, 1943 Cum. Bull. 66.

Since the business traveling expense provision has been reenacted in the successive Revenue Acts,[9] the Treasury's interpretation must be deemed to have received implied legislative approval. *Helvering* v. *Winmill*, 305 U. S. 79; *Taft* v. *Commissioner*, 304 U. S. 351; *Brewster* v. *Gage*, 280 U. S. 327.

---

[9] Section 214 (a) (1) of the Revenue Acts of 1924 and 1926; Section 23 (a) of the Revenue Acts of 1928, 1932, 1934, 1936, and 1938.

The Tax Court has consistently followed the administrative interpretation in a wide variety of factual situations. See, e. g., *Bixler* v. *Commissioner*, 5 B. T. A. 1181; *Duncan* v. *Commissioner*, 17 B. T. A. 1088, affirmed, 47 F. 2d 1082 (C. C. A. 2d); *Priddy* v. *Commisioner*, 43 B. T. A. 18, petition for review dismissed July 23, 1941 (C. C. A. 5th); *Tracy* v. *Commissioner*, 39 B. T. A. 578; *Lindsay* v. *Commissioner*, 34 B. T. A. 840; *Peters* v. *Commissioner*, 19 B. T. A. 901; *Griesemer* v. *Commissioner*, 10 B. T. A. 386; *Brown* v. *Commissioner*, 13 B. T. A. 832; *Powell* v. *Commissioner*, 34 B. T. A. 655; *Schurer* v. *Commissioner*, 3 T. C. 544; *Gustafson* v. *Commissioner*, 3 T. C. 998. Where the taxpayer has been stationed for an indefinite period in one locality it has sufficed to treat his home for tax purposes as his residence at the post of duty (e. g., *Bixler* v. *Commissioner, supra; Lindsay* v. *Commissioner, supra; Tracy* v. *Commissioner, supra*); where he leaves a regular or permanent post to go to another temporarily his residence at the regular place remains his statutory home (e. g., *Schurer* v. *Commissioner, supra; Gustafson* v. *Commissioner, supra*); and where he divides his business time between two or more places his residence at the principal place is the statutory home (e. g. *Priddy* v. *Commissioner, supra; Brown* v. *Commissioner, supra; Powell* v. *Commissioner, supra*). Significantly, in none of these decisions is there any intimation that

"home" as used in Section 23 is synonymous with a residence—legal, actual, or intended—at a point other than where the taxpayer is regularly or principally engaged in business.

Where as here the statutory provision under scrutiny is one of long standing which has acquired a meaning shaped by administrative practice and legislative reenactment, and the Tax Court in a long line of decisions has adhered to that meaning, there can be little latitude on judicial review for reaching a contrary view. In extracting the single word "home" from its context and defining it for tax purposes as the place where one "in fact" lives or has the "intention" of living, the court below was heedless to the admonition of this Court (*United States* v. *American Trucking Ass'ns, supra,* p. 544) that—

> Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, 'excepting as a different purpose is plainly shown.'

In any event, it cannot be said that the Tax Court's interpretation, in conformity with the established administrative policy, is so irrational or so unfaithful to the legislative intent as to constitute reversible error. *Dobson* v. *Commis-*

sioner, 320 U. S. 489, rehearing denied, 321 U. S. 231; *Trust u/w of Bingham* v. *Commissioner*, *supra*.

Coburn v. *Commissioner*, 138 F. 2d 763 (C. C. A. 2d), upon which the court below relied (R. 59, fn. 1), does not warrant reversal of the Tax Court's decision in this case. It dealt with a taxpayer who left his regular place of business to perform temporary engagements elsewhere, and it did not reject the Tax Court's construction of the statute. It was properly distinguished in the *Barnhill* and *Winborne* cases, *supra*, which involved essentially the same issue as is here presented. See also *Ellis* v. *Burnet*, 50 F. 2d 343 (App. D. C.). To the extent that the opinion in *Wallace* v. *Commissioner*, 144 F. 2d 407 (C. C. A. 9th), may be read as construing "away from home" as equivalent to absence from a residence other than the one at the taxpayer's business headquarters, it suggests, for the reasons expressed in the *Barnhill* and *Winborne* cases, an erroneous construction of the business traveling expense clause.

Whatever may be the difficulties in a particular case of determining the permanent or regular place of business of a taxpayer who is employed successively at different locations, or the principal place of business of a taxpayer who carries on business at two or more places simultaneously and divides his business time between them—a matter of fact-finding within the province of the Tax

Court—we are not here confronted with any dispute as to the essential facts. The testimony is clear (R. 34, 36–39, 44–46), the Tax Court found (R. 18, 21), and the court below accepted as the fact (R. 58–59), that since 1927 taxpayer had been regularly employed at Mobile and had performed his principal duties there.

We submit that the only reasonable construction of the business traveling expense provision is the one which the Treasury and the Tax Court have applied since that provision first appeared in the Revenue Act of 1921, and which the Circuit Court of Appeals for the Fourth Circuit sustained in the *Barnhill* and *Winborne* cases. That provision is not concerned with the number of dwelling places the taxpayer chooses to own or rent or with which one he labels "home", but is aimed at affording relief to a taxpayer who in pursuit of his vocation is required by the exigencies of his business temporarily to travel away from the locality where he is regularly practicing it. This is the only construction reconcilable with the legislative proscription in Section 24 of any deduction for personal or living expenses, with the whole of Section 23 of which the business traveling expense provision is a part, and with the doctrine that deduction provisions must be strictly construed; moreover, it is the only common sense construction susceptible of practical application to varying factual patterns. The

Court below has attributed to the word "home", which has many connotations, a meaning unrelated to its statutory setting and discordant with the settled administrative interpretation. Under its holding living expenses at a taxpayer's established business headquarters become deductible business expenses merely because for reasons satisfactory to himself he maintains his living headquarters elsewhere. The advantages to taxpayers so situated, and the discrimination against those whose only dwelling places are in the neighborhood of their businesses, are apparent. If permitted to stand, the decision below would open the door wide, particularly in these times of widespread changes of employment location, to many types of claims for deduction of living and personal expenses in the guise of business traveling expenses.

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted.

J. HOWARD MCGRATH,
Solicitor General.
SAMUEL O. CLARK, JR.,
Assistant Attorney General.
SEWALL KEY,
J. LOUIS MONARCH,
HARRY BAUM,
Special Assistants to the Attorney General.

NOVEMBER 1945.

APPENDIX

Internal Revenue Code:

SEC. 23 [as amended by Sec. 121 of the Revenue Act of 1942, c. 619, 56 Stat. 789.]. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) *Expenses.*—

(1) *Trade or Business Expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(26 U. S. C., Sec. 23.)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

* * * * *

(26 U. S. C., Sec. 24.)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

> SEC. 19.23 (a)–1. *Business expenses.*— Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, * * *. Among the items included in business expenses are management expenses, commissions, labor, supplies, incidental repairs, operating expenses of automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see section 19.23 (a)–2, advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. * * *
>
> SEC. 19.23 (a)–2. *Traveling expenses.*— Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.
>
> (a) If, then, an individual, whose business requires him to travel, receives a salary as full compensation for his services, without reimbursement for traveling expenses, or is employed on a commission basis with no expense allowance, his traveling expenses, including the entire amount expended for meals and lodging, are deductible from gross income.

(b) If an individual receives a salary and is also repaid his actual traveling expenses, he shall include in gross income the amount so repaid and may deduct such expenses.

(c) If an individual receives a salary and also an allowance for meals and lodging, as, for example, a per diem allowance in lieu of subsistence, the amount of the allowance should be included in gross income and the cost of such meals and lodging may be deducted therefrom.

A payment for the use of a sample room at a hotel for the display of goods is a business expense. Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may de deducted. A taxpayer claiming the benefit of the deductions referred to herein must attach to his return a statement showing (1) the nature of the business in which engaged; (2) the number of days away from home during the taxable year on account of business; (3) the total amount of expenses incident to meals and lodging while absent from home on business during the taxable year; and (4) the total amount of other expenses incident to travel and claimed as a deduction.

Claim for the deductions referred to herein must be substantiated, when required by the Commissioner, by evidence showing in detail the amount and nature of the expenses incurred.

Commuters' fares are not considered as business expenses and are not deductible.

U. S. GOVERNMENT PRINTING OFFICE: 1943